

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-1939

Kamal K. Patel,

Appellant,

v.

E J Prince, Clinical Director, FCI -
Forrest City; United States,

Appellees.

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* Appeal from the United States
* District Court for the
* Eastern District of Arkansas.
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* [UNPUBLISHED]
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Submitted: April 23, 2008
Filed: May 5, 2008

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Federal inmate Kamal Patel appeals the district court's preservice dismissal with prejudice of his civil complaint. In dismissing the complaint, the court instructed Patel to amend the complaint in one of his other pending actions, thereby apparently treating the instant complaint as duplicative and frivolous. See 28 U.S.C. § 1915A(a) (court shall review, before docketing or as soon as possible after docketing, civil complaint by prisoner filed against government entity or employee), (b)(1) (court shall dismiss complaint if it is frivolous, malicious, or fails to state claim upon which relief can be granted); cf. Aziz v. Burrows, 976 F.2d 1158, 1158-59 (8th Cir. 1992) (affirming 28 U.S.C. § 1915 dismissal on ground that "district courts may dismiss a

duplicative complaint raising issues directly related to issues in another pending action brought by the same party”); Van Meter v. Morgan, 518 F.2d 366, 367-68 (8th Cir. 1975) (per curiam) (affirming district court’s § 1915 dismissal of complaint as frivolous where district court explained that petitioner had previously been permitted to file three complaints, one of which was against same defendant and appeared to be based on same conduct as in dismissed complaint).

Upon review, we conclude that, under the present circumstances, the district court abused its discretion in dismissing Patel’s complaint, because it appears from record information brought to our attention by Patel that his complaint differs significantly from the complaints in his other pending actions. See Aziz, 976 F.2d at 1159 (dismissal of duplicative complaint reviewed for abuse of discretion); Van Meter, 18 F.2d at 368 (same); cf. I.A. Durbin, Inc. v. Jefferson Nat. Bank, 793 F.2d 1541, 1551 (11th Cir. 1986) (general rule for determining duplicative litigation is whether parties, issues, and available relief do not significantly differ between two actions; finding actions not duplicative when parties and issues were substantially different); Complaint of Bankers Trust Co. v. Chatterjee, 636 F.2d 37, 40 (3rd Cir. 1980) (it is important that only truly duplicative litigation be avoided); see also Miller v. Norris, 247 F.3d 736, 739 (8th Cir. 2001) (pro se filings are to be liberally construed).

Accordingly, we reverse the dismissal of Patel’s complaint and remand the case to the district court for further proceedings consistent with this opinion. We also grant Patel’s “motion for judicial notice.”